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Serial No. 10/721,647
60,446-243
03ZFM049REMARKS

The Examiner's Answer mailed September 8, 2006 raises several new arguments. These are addressed below.

Arguments with regard to interpretation of the Huber ('978) reference

The Examiner continuously attempts to argue that the *Huber* references ('978 and '996) discloses more than measuring the speed of the shafts.

Answer:

The Examiner's entire rejection depends wholly on the Examiner's overly broad interpretation of the references. While it is true that the claims in a patent application are to be given their broadest reasonable interpretation consistent with the specification during prosecution of a patent application (see, for example, *In re Zietz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)), it is also well settled that terms in a claim should be construed as those skilled in the art would construe them (see *Specialty Composites v. Cabot Corp.*, 845 F.2d 981, 986, 6 USPQ2d 1601, 1604 (Fed. Cir. 1988) and *In re Johnson*, 558 F.2d 1008, 1016, 194 USPQ 187, 194 (CCPA 1977). Further, as pointed out by our reviewing court in *Phillips v. AWH Corp.*, 415 F.2d 1303, 1315, 75 USPQ2d 1321, 1327 (Fed. Cir. 2005), the claims, of course, do not stand alone but rather are part of a fully integrated written instrument consisting principally of a specification that concludes with the claims. Notably, the Examiner refers to Column 2, line 56 – Column 3, line 31 of *Huber* '978 and Column 3, line 27 – Column 4, line 2 of *Huber* '996 – which is a significant section (85 lines) – thus supporting Appellant's argument of the Examiner's overbroad interpretation.

What the Examiner argues is "clearly" shown simply cannot be so as the Examiner is forced to rely on significant sections of the references which in no way detract from the above section which specifically states that "the status of the clutch" is determined "by utilizing information that is *already available* and necessary for other portions of the transmission control." *Huber* specifically recites:

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position. The preferred embodiment of this invention determines the status of the clutch by utilizing information that is already available and necessary for other portions of the transmission control. The transmission control unit 32 and the engine control unit 34 utilize information regarding the rotational speeds of the engine output shaft 16 and the transmission input shaft 20. Sensors are schematically illustrated at 40 and 42 for providing the speed information regarding these shafts.

Although effective, *Huber* is only measuring the speed of the shafts using known information already available from other portions of the transmission control so that the engine can be driven in a known manner to a speed that results in the zero torque condition.

Appellant's dependent claims further delineate that Appellant's present application specifically recites identifying a speed irregularity signature by identifying, for example, a predetermined signature (claim 19) such as a predetermined noise signature (claims 4 and 20), a speed irregularity signature (claim 3), a relative movement (claim 13), or a speed irregularity (claim 17). The cited references do not disclose or suggest such specific limitations.

Respectfully submitted,

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